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January 30, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D. C. 20554

Re: **Ex Parte:** Carriage of Digital Television Broadcast Signals, CS
Docket No. 98-120; Inquiry Concerning High-speed Access to the
Internet Over Cable and Other Facilities, GN Docket No. 00-185,
CS Docket No. 02-52; Appropriate Framework for Broadband
Access to the Internet over Wireline Facilities, CC Docket Nos. 95-
20, 98-10, 02-33

Dear Ms. Dortch:

On January 29, 2003, Marc Apfelbaum, Executive Vice President and General Counsel, Time Warner Cable, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc., and the undersigned, of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, met with Susan Eid, Legal Advisor to Chairman Powell.

The main purpose of the meeting was to discuss issues relating to the above-captioned proceeding concerning the carriage of digital television broadcast signals. We argued that the Commission could not constitutionally require cable operators to carry broadcasters' digital "multicast" signals. In particular, we argued that such a requirement could not be defended on the rationale of the Supreme Court's *Turner* decisions. The administrative record does not and could not demonstrate that such a requirement is necessary to preserve the viability of broadcast television. Moreover, the burden imposed

on the speech of cable operators and programmers would be far greater than the burden sustained in *Turner*.

In addition, we discussed issues relating to the other proceedings mentioned in the caption of this letter. We argued that the Commission can lawfully decline to impose ISP access obligations on cable operators if the Commission decides not to eliminate ISP access obligations applicable to incumbent LECs.

Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this notice are being provided to you for inclusion in the public record in the above-captioned proceeding. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be "Henk Brands", with a stylized, flowing script.

Henk Brands
Counsel for Time Warner Cable

cc: Susan Eid